

STAN S. MALLISON (Cal. State Bar No. 184191)  
HECTOR R. MARTINEZ (Cal. State Bar No. 206336)  
DANIEL C. KELLER (Cal. State Bar No 332576)  
MALLISON & MARTINEZ  
1939 Harrison Street, Suite 730  
Oakland, California 94612-3547  
Telephone: (510) 832-9999  
Facsimile: (510) 832-1101  
stanm@themmlawfirm.com  
hectorm@themmlawfirm.com  
dkeller@themmlawfirm.com

Attorneys for Plaintiff  
GLENN FITE

ANDREW J. SOMMER (Cal. State Bar No. 192844)  
MEGAN S. SHAKED (Cal. State Bar No. 274174)  
CONN MACIEL CAREY LLP  
870 Market Street, Suite 1151  
San Francisco, California 94102  
Telephone: (415) 268-8894  
Facsimile: (415) 268-8889  
asommer@connmaciel.com  
mshaked@connmaciel.com

Attorneys for Defendant,  
SHAMROCK FOODS COMPANY

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION**

GLENN FITE, individually, and  
acting on behalf of a class of  
similarly situated employees,

Plaintiff,

v.

SHAMROCK FOODS COMPANY;  
an Arizona corporation, and DOES 1  
to 50, inclusive,

Defendants.

CASE NO. 2:21-CV-00023-JAM-KJN

Before the Honorable John A. Mendez

**STIPULATED PROTECTIVE  
ORDER**

Trial Set: October 3, 2022

1. 1.1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may

1 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
2 enter the following Stipulated Protective Order. The parties acknowledge that this  
3 Order does not confer blanket protections on all disclosures or responses to  
4 discovery and that the protection it affords from public disclosure and use extends  
5 only to the limited information or items that are entitled to confidential treatment  
6 under the applicable legal principles. The parties further acknowledge, as set forth  
7 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
8 file confidential information under seal; Local Rule 141 sets forth the procedures  
9 that must be followed and the standards that will be applied when a party seeks  
10 permission from the court to file material under seal.

11 1.2. GOOD CAUSE STATEMENT

12 This action is likely to involve trade secrets, confidential, and proprietary  
13 information for which special protection from public disclosure and from use for  
14 any purpose other than prosecution of this action is warranted. Such confidential  
15 and proprietary materials and information consist of, among other things,  
16 confidential business or financial information, information regarding confidential  
17 business practices, or other confidential research, development, or commercial  
18 information (including information implicating privacy rights of employees and  
19 other third parties), information otherwise generally unavailable to the public, or  
20 which may be privileged or otherwise protected from disclosure under state or  
21 federal statutes, court rules, case decisions, or common law. Accordingly, to  
22 expedite the flow of information, to facilitate the prompt resolution of disputes over  
23 confidentiality of discovery materials, to adequately protect information the parties  
24 are entitled to keep confidential, to ensure that the parties are permitted reasonable  
25 necessary uses of such material in preparation for and in the conduct of trial, to  
26 address their handling at the end of the litigation, and serve the ends of justice, a  
27 protective order for such information is justified in this matter. It is the intent of the  
28 parties that information will not be designated as confidential for tactical reasons

1 and that nothing be so designated without a good faith belief that it has been  
2 maintained in a confidential, non-public manner, and there is good cause why it  
3 should not be part of the public record of this case.

4 2. DEFINITIONS

5 2.1 Action: This pending class action in this Court entitled, *Glenn Fite v.*  
6 *Shamrock Foods Company, an Arizona corporation, and DOES 1 to 50*, Case  
7 No. 2:21-CV-00023-JAM-KJN.

8 2.2 Challenging Party: a Party or Non-Party that challenges the  
9 designation of information or items under this Order.

10 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
11 how it is generated, stored or maintained) or tangible things that qualify for  
12 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
13 the Good Cause Statement.

14 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
15 their support staff).

16 2.5 Designating Party: a Party or Non-Party that designates information or  
17 items that it produces in disclosures or in responses to discovery as  
18 “CONFIDENTIAL.”

19 2.6 Disclosure or Discovery Material: all items or information, regardless  
20 of the medium or manner in which it is generated, stored, or maintained (including,  
21 among other things, testimony, transcripts, and tangible things), that are produced  
22 or generated in disclosures or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter  
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
25 an expert witness or as a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a corporate party to  
27 this Action. House Counsel does not include Outside Counsel of Record or any  
28 other outside counsel.

1           2.9    Non-Party: any natural person, partnership, corporation, association or  
2   other legal entity not named as a Party to this action.

3           2.10   Outside Counsel of Record: attorneys who are not employees of a  
4   party to this Action but are retained to represent a party to this Action and have  
5   appeared in this Action on behalf of that party.

6           2.11   Party: any natural person, partnership, corporation, association or other  
7   legal entity named as a party to this Action.

8           2.12   Producing Party: a Party or Non-Party that produces Disclosure or  
9   Discovery Material in this Action.

10          2.13   Professional Vendors: persons or entities that provide litigation  
11   support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
12   demonstrations, and organizing, storing, or retrieving data in any form or medium)  
13   and their employees and subcontractors.

14          2.14   Protected Material: any Disclosure or Discovery Material that is  
15   designated as “CONFIDENTIAL.”

16          2.15   Receiving Party: a Party that receives Disclosure or Discovery  
17   Material from a Producing Party.

### 18   3.    SCOPE

19          The protections conferred by this Stipulation and Order cover not only  
20   Protected Material (as defined above), but also (1) any information copied or  
21   extracted from Protected Material; (2) all copies, excerpts, summaries, or  
22   compilations of Protected Material; and (3) any testimony, conversations, or  
23   presentations by Parties or their Counsel that might reveal Protected Material.

24          Any use of Protected Material at trial shall be governed by the orders of the  
25   trial judge. This Order does not govern the use of Protected Material at trial.

### 26   4.    DURATION

27          Even after final disposition of this litigation, the confidentiality obligations  
28   imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be  
2 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
3 with or without prejudice; and (2) final judgment herein after the completion and  
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
5 including the time limits for filing any motions or applications for extension of time  
6 pursuant to applicable law.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

9 Each Party or Non-Party that designates information or items for protection  
10 under this Order must take care to limit any such designation to specific material  
11 that qualifies under the appropriate standards. The Designating Party must  
12 designate for protection only those parts of material, documents, items or oral or  
13 written communications that qualify so that other portions of the material,  
14 documents, items or communications for which protection is not warranted are not  
15 swept unjustifiably within the ambit of this Order.

16 Mass, indiscriminate or routinized designations are prohibited. Designations  
17 that are shown to be clearly unjustified or that have been made for an improper  
18 purpose (e.g., to unnecessarily encumber the case development process or to  
19 impose unnecessary expenses and burdens on other parties) may expose the  
20 Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it  
22 designated for protection do not qualify for protection, that Designating Party must  
23 promptly notify all other Parties that it is withdrawing the inapplicable designation.

24 **5.2 Manner and Timing of Designations.** Except as otherwise provided in  
25 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
26 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
27 under this Order must be clearly so designated before the material is disclosed or  
28 produced.

Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic  
2 documents, but excluding transcripts of depositions or other pretrial or trial  
3 proceedings), that the Producing Party affix at a minimum, the legend  
4 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that  
5 contains protected material. If only a portion of the material on a page qualifies for  
6 protection, the Producing Party also must clearly identify the protected portion(s)  
7 (e.g., by making appropriate markings in the margins).

8 A Party or Non-Party that makes original documents available for inspection  
9 need not designate them for protection until after the inspecting Party has indicated  
10 which documents it would like copied and produced. During the inspection and  
11 before the designation, all of the material made available for inspection shall be  
12 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
13 documents it wants copied and produced, the Producing Party must determine  
14 which documents, or portions thereof, qualify for protection under this Order. Then,  
15 before producing the specified documents, the Producing Party must affix the  
16 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
17 portion of the material on a page qualifies for protection, the Producing Party also  
18 must clearly identify the protected portion(s) (e.g., by making appropriate markings  
19 in the margins).

20 (b) for testimony given in depositions that the Designating Party  
21 identifies the Disclosure or Discovery Material on the record, within 30 days of  
22 receipt of the deposition transcript all protected testimony.

23 (c) for information produced in some form other than documentary and  
24 for any other tangible items, that the Producing Party affix in a prominent place on  
25 the exterior of the container or containers in which the information is stored the  
26 legend “CONFIDENTIAL.” If only a portion or portions of the information  
27 warrants protection, the Producing Party, to the extent practicable, shall identify the  
28

protected portion(s).

1           5.3    Inadvertent Failures to Designate. If timely corrected upon discovery,  
2 an inadvertent failure to designate qualified information or items does not, standing  
3 alone, waive the Designating Party's right to secure protection under this Order for  
4 such material. Upon timely correction of a designation, the Receiving Party must  
5 make reasonable efforts to assure that the material is treated in accordance with the  
6 provisions of this Order.

7       6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

8           6.1    Timing of Challenges. Any Party or Non-Party may challenge a  
9 designation of confidentiality at any time that is consistent with the Court's  
10 Scheduling Order.

11          6.2    Meet and Confer. The Challenging Party shall meet and confer with  
12 the Designating Party before filing a motion with the court.

13          6.3    The burden of persuasion in any such challenge proceeding shall be on  
14 the Designating Party. Frivolous challenges, and those made for an improper  
15 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
16 parties) may expose the Challenging Party to sanctions. Unless the Designating  
17 Party has waived or withdrawn the confidentiality designation, all parties shall  
18 continue to afford the material in question the level of protection to which it is  
19 entitled under the Producing Party's designation until the Court rules on the  
20 challenge.

21       7.       ACCESS TO AND USE OF PROTECTED MATERIAL

22          7.1    Basic Principles. A Receiving Party may use Protected Material that is  
23 disclosed or produced by another Party or by a Non-Party in connection with this  
24 Action only for prosecuting, defending or attempting to settle this Action. Such  
25 Protected Material may be disclosed only to the categories of persons and under the  
26 conditions described in this Order. When the Action has been terminated, a  
27 Receiving Party must comply with the provisions of section 13 below (FINAL  
28



DISPOSITION).

1           Protected Material must be stored and maintained by a Receiving Party at a  
2           location and in a secure manner that ensures that access is limited to the persons  
3           authorized under this Order.

4           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless  
5           otherwise ordered by the court or permitted in writing by the Designating Party, a  
6           Receiving Party may disclose any information or item designated  
7           “CONFIDENTIAL” only to:

8                   (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
9           well as employees of said Outside Counsel of Record to whom it is reasonably  
10          necessary to disclose the information for this Action;

11                   (b) Where the Receiving Party is a partnership, corporation,  
12          association or other legal entity, the officers, directors, and employees (including  
13          House Counsel) of that Receiving Party to whom disclosure is reasonably necessary  
14          for this Action;

15                   (c) Experts (as defined in this Order) of the Receiving Party to whom  
16          disclosure is reasonably necessary for this Action and who have signed the  
17          “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18                   (d) the court and its personnel;

19                   (e) engaged court reporters and their staff;

20                   (f) engaged professional jury or trial consultants, mock jurors, and  
21          Professional Vendors to whom disclosure is reasonably necessary for this Action  
22          and who have signed the “Acknowledgment and Agreement to Be Bound”  
23          (Exhibit A);

24                   (g) an individual who authored or has personal knowledge of that  
25          information provided that individual (1) has signed the form attached as Exhibit A  
26          hereto, and (2) is not permitted to keep any confidential information, unless  
27          otherwise agreed by the Designating Party or ordered by the court;  
28



1 (h) during their depositions, witnesses, and attorneys for witnesses, in  
2 the Action to whom disclosure is reasonably necessary provided: (1) the deposing  
3 party requests that the witness sign the form attached as Exhibit A hereto; and (2)  
4 they will not be permitted to keep any confidential information, unless otherwise  
5 agreed by the Designating Party or ordered by the court. Pages of transcribed  
6 deposition testimony or exhibits to depositions that reveal Protected Material may  
7 be separately bound by the court reporter and may not be disclosed to anyone  
8 except as permitted under this Stipulated Protective Order; and

9 (i) any mediator or settlement officer, and their supporting personnel,  
10 mutually agreed upon by any of the parties engaged in settlement discussions.

11 7.3 Aggrieved Employee Information. Contact information and any other  
12 personal identifying information for aggrieved employees pursuant to Plaintiff's  
13 Private Attorneys General Act claims shall only be used for purposes of this action,  
14 and for no other reason.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
16 IN OTHER LITIGATION

17 If a Party is served with a subpoena or a court order issued in other litigation  
18 that compels disclosure of any information or items designated in this Action as  
19 "CONFIDENTIAL," that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification shall  
21 include a copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order to  
23 issue in the other litigation that some or all of the material covered by the subpoena  
24 or order is subject to this Protective Order. Such notification shall include a copy of  
25 this Stipulated Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be pursued  
27 by the Designating Party whose Protected Material may be affected.

28 If the Designating Party timely seeks a protective order, the Party served with

1 the subpoena or court order shall not produce any information designated in this  
2 action as “CONFIDENTIAL” before a determination by the court from which the  
3 subpoena or order issued, unless the Party has obtained the Designating Party’s  
4 permission. The Designating Party shall bear the burden and expense of seeking  
5 protection in that court of its confidential material and nothing in these provisions  
6 should be construed as authorizing or encouraging a Receiving Party in this Action  
7 to disobey a lawful directive from another court.

8 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
9 PRODUCED IN THIS LITIGATION

10 (a) The terms of this Order are applicable to information produced by a Non-  
11 Party in this Action and designated as “CONFIDENTIAL.” Such information  
12 produced by Non-Parties in connection with this litigation is protected by the  
13 remedies and relief provided by this Order. Nothing in these provisions should be  
14 construed as prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to  
16 produce a Non-Party’s confidential information in its possession, and the Party is  
17 subject to an agreement with the Non-Party not to produce the Non-Party’s  
18 confidential information, then the Party shall:

19 (1) promptly notify in writing the Requesting Party and the Non-Party  
20 that some or all of the information requested is subject to a confidentiality  
21 agreement with a Non-Party;

22 (2) promptly provide the Non-Party with a copy of the Stipulated  
23 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
24 specific description of the information requested; and

25 (3) make the information requested available for inspection by the  
26 Non-Party, if requested.

27 (c) If the Non-Party fails to seek a protective order from this court within 14  
28 days of receiving the notice and accompanying information, the Receiving Party

1 may produce the Non-Party's confidential information responsive to the discovery  
2 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
3 not produce any information in its possession or control that is subject to the  
4 confidentiality agreement with the Non-Party before a determination by the court.  
5 Absent a court order to the contrary, the Non-Party shall bear the burden and  
6 expense of seeking protection in this court of its Protected Material.

7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
9 Protected Material to any person or in any circumstance not authorized under this  
10 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
11 writing the Designating Party of the unauthorized disclosures, (b) use its best  
12 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
13 person or persons to whom unauthorized disclosures were made of all the terms of  
14 this Order, and (d) request such person or persons to execute the "Acknowledgment  
15 and Agreement to Be Bound" that is attached hereto as Exhibit A.

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
17 PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain  
19 inadvertently produced material is subject to a claim of privilege or other  
20 protection, the obligations of the Receiving Parties are those set forth in Federal  
21 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
22 whatever procedure may be established in an e-discovery order that provides for  
23 production without prior privilege review. Pursuant to Federal Rule of Evidence  
24 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
25 of a communication or information covered by the attorney-client privilege or work  
26 product protection, the parties may incorporate their agreement in the stipulated  
27 protective order submitted to the court.  
28

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Rule 141. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in Section 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel

are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. REMEDIES

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: November 29, 2021

LAUBY MANKIN & LAUBY, LLP

By  
:

Stan S. Mallison  
Hector R. Martinez  
Liliana Garcia  
Daniel Keller  
Attorney for Plaintiff  
GLENN FITE

DATED: November 29, 2021

CONN MACIEL CAREY LLP

By  
:


Andrew J. Sommer  
Megan S. Shaked  
Attorneys for Defendant  
SHAMROCK FOODS COMPANY

ORDER

The court has reviewed the parties' stipulated protective order. (See ECF No. 24). The stipulation lists categories of information sought to be protected (see

Section 1.2 above), and otherwise comports with the relevant authorities and the court's applicable local rule. See L.R. 141.1(c);<sup>1</sup> see also Phillips ex rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002) (requiring a showing of good cause for protective orders). The court APPROVES the protective order subject to the following clarification. The Local Rules state that once an action is closed, "unless otherwise ordered, the court will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f). Courts in the district generally do not agree to retain jurisdiction for disputes concerning protective orders after closure of the case. See, e.g., MD Helicopters, Inc. v. Aerometals, Inc., 2017 WL 495778 (E.D. Cal., Feb. 03, 2017). Thus, the court will not retain jurisdiction over this protective order once the case is closed.

Dated: November 29, 2021

  
 KENDALL J. NEWMAN  
 UNITED STATES MAGISTRATE JUDGE

fite.23

<sup>1</sup> The Court's Local Rules instruct the parties, when requesting a protective order, to include in their submission:

- (1) A description of the types of information eligible for protection under the order, with the description provided in general terms sufficient to reveal the nature of the information (e.g., customer list, formula for soda, diary of a troubled child);
- (2) A showing of particularized need for protection as to each category of information proposed to be covered by the order; and
- (3) A showing as to why the need for protection should be addressed by a court order, as opposed to a private agreement between or among the parties.

Local Rule 141.1(c).

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated Protective Order that  
was issued by the United States District Court for the Eastern District of California  
on [date] in the case of *Glenn Fite v. Shamrock Foods Company, an Arizona*  
*corporation, and DOES 1 to 50*, Case No. 2:21-CV-00023-JAM-KJN. I agree to  
comply with and to be bound by all the terms of this Stipulated Protective Order  
and I understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will  
not disclose in any manner any information or item that is subject to this Stipulated  
Protective Order to any person or entity except in strict compliance with the  
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Eastern District of California for enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of  
this action. I hereby appoint \_\_\_\_\_ [print or type full  
name] of \_\_\_\_\_ [print or type full  
address and telephone number] as my California agent for service of process in  
connection with this action or any proceedings related to enforcement of this  
Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_